

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING THURSDAY, NOVEMBER 14, 1996

Chairman Heavey called the meeting to order at 1:30 p.m. at Cavanaugh's River Inn, Spokane, Washington.

MEMBERS PRESENT: **EDWARD HEAVEY, Chairman; CURTIS LUDWIG, Vice Chair; LIZ McLAUGHLIN; JUANITA M. GARRISON, and KATHLEEN Q. CASEY.**

OTHERS PRESENT: **FRANK MILLER, Director;
BEN BISHOP, Deputy Director;
SHARON TOLTON, Assistant Director, Special Operations;
SHERRI WINSLOW, Assistant Director, Field Operations;
CALLY CASS-HEALY, Assistant Director, Licensing;
CARRIE TELLEFSON, Special Assistant, Public Affairs;
JONATHAN McCOY, Assistant Attorney General;
and SUSAN GREEN, Executive Assistant.**

Chairman Heavey introduced the WSGC staff and Commission members present.

LICENSE APPROVALS

NEW LICENSES, CHANGES, WITHDRAWALS AND TRIBAL CERTIFICATIONS

Ms. Cass-Healy said there was one correction on the license approvals. The staff asked to delete Trang Dai Deli Café, on page 5, under new punchboard/pull tab licenses. This application requires further review. **Commissioner Ludwig** moved for approval of the new licenses, changes, withdrawals and tribal certifications with the deletion of Trang Dai Deli Café; **Commissioner McLaughlin** seconded the motion. *Vote taken, motion carried with five aye votes.*

REVIEW OF FRIDAY'S AGENDA

Carrie Tellefson said there will be two staff reports tomorrow, including an update on the card room enhancement program from Assistant Director Sherri Winslow and an update on the net income rules, which are up for final action tomorrow, from Assistant Director Cally Cass-Healy. There are numerous rules up for final action tomorrow, including 11 rules regarding the progressive pull tab system, 23 rules regarding the bingo task force, and 8 rules having to do with license fee increases and license rules. There are a couple of rules up for discussion and there are two bingo amendment rules being proposed for discussion and possible filing. There is also a petition before the Commission to amend a raffle rule. The petitioners will not be present, but staff will present it on their behalf. A change to the agenda is requested in order to include two card room contracts for approval. These contracts are for Hi-Line Lanes and The Shed. This request is due to the fact that there is no December Commission meeting and staff does not want the licensees to have to wait until the January meeting.

Chairman Heavey announced that there will be a special hearing at 3:00 p.m., at which time the Kalispel Tribe will present their request to enter into negotiations with the state for a tribal-state gaming compact. At the same time, the public will be provided an opportunity to comment on the casino proposal. The Commission will take a break prior to the Kalispel issue and will not start again until 3:00 p.m. The hearing will take place only until 5:00 p.m., at which time the hearing will recess. If public testimony is not complete at that time, the Commission will have to take additional testimony at a date and place to be named later.

FOLLOW-UP REVIEW

United Blind of the Tri-Cities

Ms. Cass-Healy said there are two issues before the Commission today. One is the summary of the petition status and the other is the qualification review of the organization. She said she would read the summary first and then follow with the qualification review and staff recommendations.

Ms. Cass-Healy said that during the Commission meeting held in Silverdale on January 11, 1996, United Blind of the Tri Cities' petition for relief from the gambling net income requirements of WAC 230-20-064 was presented to the Commission. The Commission granted the petition for relief in order for the staff to verify information presented, study competitive factors, and determine what effect granting relief would have on the nonprofit gambling operations in the surrounding area. Three added conditions to the granting of the petition for relief, were that United Blind of the Tri Cities gambling operation remain profitable, the organization maintain a prize payout percentage of 84% or less, and that the organization freeze all controllable expenses.

Ms. Cass-Healy said United Blind of the Tri Cities was formed in 1976. Their mission is to promote the special interests of the blind by expanding equality, independence, and opportunities for blind and physically disabled citizens. Despite the organization's financial difficulties, their Kennewick office remained open and provided services for blind and visually-impaired citizens of all ages throughout Central Washington. The organization continued to use its computer system to produce Braille and large print text for the blind and visually impaired. In 1995, they continued to provide a service of having volunteers read aloud and record books and magazines onto cassette tapes, including five technical textbooks for local college students. The organization recorded three issues of their state newsletter and distributed them to 225 blind persons throughout the state. One of the organization's supportive projects in 1995 was the Senior Companion Program. This program provided in-home support, such as reading mail or shopping, to many blind citizens living independently. The organization also took part in numerous local fairs and community activities with a goal of changing negative attitudes and misconceptions about blindness.

As previously stated, the organization did not meet its net income requirements for 1995. They experienced a net loss in gambling operations of -1 percent. They did not qualify for the bingo study group moratorium. The organization had excessive reserves of \$45,455 in 1995. The excessive reserves are being used to pay fixed expenses so that the organization may continue to provide program services. According to Frank Cuta, President, the financial difficulties are a result of the poor Tri Cities economy and increased competition for the bingo hall. They plan to move the bingo operation to a new location no later than April 1997. The proposed location is further from the bingo hall's main competition, and the organization anticipates it will draw more potential players. The organization is currently meeting the net income requirements of a "Class F" license.

The condition that United Blind make a net profit has been met. Furthermore, it appears that granting the petition for net income relief has not significantly impacted area gambling facilities. According to financial reports provided by the licensee, the organization has made a net profit for the first three quarters of 1996. The organization has maintained an average prize payout from bingo games that is equal to or less than 84 percent and was able to freeze all controllable expenses. Although the organization has currently made progress by making a profit, they are still significantly out of compliance with net return requirements.

Ms. Cass-Healy said staff recommends that the Commission grant temporary approval for qualification, as stated in the organization's report, until staff can determine if future program service requirements are met. The staff also recommends that the Commission discontinue relief from net return requirements and require the organization to comply with all requirements of the Washington Administrative Code, including a downgrade in license class as applicable. Staff would also like to continue monitoring the organization monthly, until at least the second quarter of 1997, to see if seasonal fluctuations are indicated. Staff also recommends the organization be subject to the requirements of proposed WACs 230-20-059 and 230-20-062 at their next measurement period of December 31, 1996, and that action be taken as dictated by the rules.

Commissioner Ludwig asked if the organization would be allowed to continue as a Class "F" licensee. **Ms. Cass-Healy** said no, the organization would be downgraded to a Class "D" license. **Commissioner Garrison** asked why the organization would be downgraded two class levels. **Ms. Cass-Healy** answered that since the organization is so significantly out of compliance percentage-wise, the rule states that they be downgraded to the level they are operating at or a maximum of two license classes.

Commissioner McLaughlin asked what changes had been made by the organization lately, in order to raise its profits so significantly.

Frank Cuta, President, for United Blind of the Tri Cities, said he wasn't aware of any specific changes that had been made. The organization has done its best to bring expenses down and operate competitively. He said the third quarter was outstanding, probably because the prize grew quite large and brought a lot of people in through the doors.

Commissioner Casey asked if the prize was gone. **Mr. Cuta** said yes, the prize is gone. **Commissioner Casey** asked how the organization was doing so far in the fourth quarter. **Mr. Cuta** said October was not very good.

Commissioner Ludwig referred to section nine where it indicates that wages on September 30, 1996, were \$59,000, and asked if that figure represented wages for the entire year or just through September. **Mr. Cuta** said the organization's monthly wages are around \$8,000 per month and that figure represents wages just through September. Wages used to be around \$10,000 per month and this is an area the organization has been able to bring expenses down. **Commissioner Ludwig** noted that in Appendix B, the total wages for 1995 was about \$92,000. **Commissioner Ludwig** also said the organization's facility was near another game across the street. **Mr. Cuta** said that when the United Blind first moved into its present location, they felt that the move would augment both businesses since they would be operating on different days of the week and it would provide a central location for bingo players to come all week long. The only disadvantage to United Blind is that the other organization had the weekend dates. He said their new location is at 23 1st Avenue in Kennewick and they would like to have at least one weekend day. **Commissioner Ludwig** asked how the new rent compares to what they presently pay; **Mr. Cuta** said the rental decrease is from \$7,800 to \$5,000 per month. **Commissioner Ludwig** asked who the current landlord is; **Mr. Cuta** said that the current landlord is Greg Markel and that the current rent, which is \$1 per square foot, is too high for their organization.

Commissioner Casey asked how firm the organization's plans are regarding moving the services operations from its current location to this new location. **Mr. Cuta** said that is not firm at all; everything is contingent on the move, which is also not for certain. He said they are still receiving bids, working on the plans, etc. The current situation is that the organization has a contractor who is negotiating with sub-contractors, the landlord is bending over backwards to get United Blind into this building, and he is putting \$60,000 into the building for roofing, heating, venting, and air conditioning. The remodeling costs are going to be around \$40-50,000. They could have afforded \$30,000, but not \$40-50,000.

Mr. Cuta said the group has really appreciated the grant of delinquency because they have been able to continue offering their services. Regarding Class "D", which is two classes below where they operate now, he said they will not be able to operate at that level, as they are barely making ends meet now. **Mr. Cuta** asked when that would take affect; **Ms. Cass-Healy** said, since their fiscal year ends December 31, 1996, the downgrade would occur July 1, 1997. However, this is dependent on what the recommendation of the Commission is, because this is a petition and therefore a special circumstance as opposed to a straight application of the rules.

Commissioner Ludwig asked if the organization will have to meet certain program service expenditures if they are allowed to receipt under the recommendation. **Ms. Cass-Healy** said yes, that is already in the rules. The organization has to spend sixty percent of their net income towards programs services.

Commissioner Ludwig asked if it was possible for the organization to decrease its program service expenditures and set aside some of that money for its remodeling expenses.

Director Miller said the concern would be that the money would be used for the remodeling and not for charitable purposes and that would obviously be a questionable situation. That is why those parameters are in the rule. **Chairman Heavey** asked if the construction of a facility that would render services to the clientele qualified as a charitable purpose. **Mr. Bishop** said yes, if it was for providing services. If the lease hold improvements were to make it a bingo game though, that would be questionable. They could direct a portion of their bingo income towards that remodeling.

Mr. Cuta said they may have to petition for relief again in order to use the necessary money to remodel. **Ms. Cass-Healy** said that is a different requirement, relating to excessive reserves, while the requirement that is currently being discussed has to do with the percentage of net income for the organization's current measurement year applied to program services. **Mr. Cuta** referred to the remark that the organization is still significantly out of compliance; **Director Miller** asked Ms. Cass-Healy for clarification on this issue. **Ms. Cass-Healy** said the organization is hanging in the balance because staff is projecting more losses based on the numbers that the organization is providing right now. That is where the downgrade comes into effect.

Commissioner Casey asked when their lease expires; **Mr. Cuta** said their current lease expires at the end of May or June 1997. **Ms. Cass-Healy** said the group is out of compliance by 0.1% right now. Under the new requirement, they would be allowed to remain at a Class "F".

Ms. Cass-Healy said that according to information provided by the United Blind, their bingo gross receipts were slightly over \$67,000, pull tabs gross receipts were about \$40,000, prizes paid were at 85% and for bingo were around 57.5%, and their net receipts were about 21%. Based on their history of expenses, staff projects they will probably have a loss for the month of October.

Commissioner Garrison asked if as of December 31, 1996, the organization would be back in compliance. **Ms. Cass-Healy** said that is unknown at this point because they are very close right now but current figures indicate they may have another loss. They will probably be in compliance under the new rule. **Commissioner Garrison** said her problem is that the organization is out of compliance for October and November but given the new rule that goes into effect on December 31, 1996, they might be back in compliance. In the meantime they are losing the monies that might enable them to get into their new facilities. She asked when the organization can reapply for license status. **Ms. Cass-Healy** said if the organization is downgraded, they have two quarters to show that they can operate at the higher level again. **Commissioner Garrison** said her perception of that remark is that in two quarters the organization would be out of business. **Ms. Cass-Healy** said if the organization was downgraded, they can operate at the downgraded level as long as they wanted to if they were in compliance with that level. If they wanted to upgrade again to their previous level, they would have to prove that they could operate under those requirements and then they could petition for upgrade. **Commissioner Garrison** asked if downgrading had a limit as to what their profit and lost statement should or should not show. **Ms. Cass-Healy** said yes, but only by percentage. For instance, if they were downgraded to a "D" license, then they would have to achieve the net income return for all class "D" licenses.

Commissioner Garrison asked if the organization was downgraded, would they be required to make less money or more money. **Ms. Cass-Healy** said they would be prohibited from making as much in gross receipts. They would have to find a way to control their expenses and prizes so that they could meet the minimum net return requirements for the class they have been downgraded to.

Mr. Cuta asked for clarification on the downgrade and when it would occur. **Ms. Cass-Healy** said that the downgrade would occur on July 1, 1997. **Director Miller** said the burden is on the licensee to show they can operate at a higher level. If they can do that, they can go back to their previous license class. If they cannot, then they become a smaller game.

Commissioner Ludwig asked how much help the Commission staff can give to the organization; **Director Miller** said that staff always tries to point out where organizations can cut expenses, however, historically staff has not gotten involved in the management of the games. **Commissioner Ludwig** said he is encouraged by the new location, different days of operation, and a reduction in rent and feels that these factors will give the organization some assistance. **Director Miller** said the rent is a significant factor. When this organization went to its current location a few years ago, staff informed them that we believed the rent would cause a problem for them. If they can reduce their rent, that will certainly help them.

Commissioner Ludwig moved to adopt the staff's recommendation; **Commissioner Casey** seconded the motion. **Commissioner Ludwig** said he is personally very sympathetic to the United Blind of the Tri Cities organization because of the good work they do for the blind community, but he has worried that they were in a position of losing money. He said that if he thought there was any indication that that wouldn't change, he wouldn't be willing to see them continue. He said he is encouraged by some of the things he's heard and hopes that they

make it.

Commissioner Casey referred to part two of the recommendation where it recommends to discontinue relief from the net return requirement and asked if that means the annual net return requirements. **Ms. Cass-Healy** said that means when they petition the Commission....

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Commissioner Casey said she would sure hate to see them use all their funds toward a bingo operation that may not even make it.

Chairman Heavey called for the vote. *Vote taken; motion carried with four aye votes.* (Commissioner Garrison abstained from voting.)

FORMAL REVIEW

Big Brothers & Sisters of Spokane

Ms. Cass-Healy said the organization was formed in 1965 and its mission is to provide guidance, aid, and companionship to children from single parent homes. Big Brothers and Big Sisters of Spokane County did not meet its required combined net income percentage of 17% for its class M bingo license. They missed it by achieving a 13.4% for the fiscal year end. However, the organization is currently participating in the net income moratorium. For the quarters ending March 31, 1996, and June 30, 1996, the organization's combined net returns were 16.4% and 10.5% respectively. More than 60% of the organization's gambling proceeds were spent toward providing program services and supporting services expenses were less than 35% of functional expenses. The organization did not have excessive reserves. She said the WSGC staff recommends Big Brothers/Big Sisters of Spokane County be approved as a charitable organization and authorized to conduct gambling activities in the state of Washington.

Don Kaufman, executive director of the organization, introduced Sherry Katt

Ms. Katt introduced the organization's board members and staff in attendance. She said the packets that have been given to the Commission include the organization's annual report on the left hand side and a discussion of their program on the right hand side. Other information within the packet supports additional fund raising programs that the organization has started up to augment their declining revenues from bingo.

Mr. Kaufman referred to documents in the packet he handed out. The first overhead showed program data for 1995, including the volume of service that the organization is providing to the community. The organization dealt with 123 client applications. The organization's clients are single parent children, ages seven to fourteen. There were 105 matches last year. There is a process for all the matches made. A successful match is one that lasts at least one year, and has a positive impact on the child. The next page outlined the public-private ventures study, which took eight agencies around the country and examined the way they do business. The study had a control group of kids that weren't matched and a control group of kids that were matched. The study found that Big Brothers/Big Sisters is quite successful in working with kids on a one-to-one basis. It takes professional matching and supervision to make a success. The study found that 46% of the youth were less likely than their peers to start using illegal drugs, 27% were less likely to start drinking alcohol, 52% were less likely to skip a day of school and 37% were less likely to skip a class. He showed a map that illustrated what's been going on in Eastern Washington with regard to competition. The tribal casinos are located just far enough away for weekend trips by players, which tremendously impacts Big Brothers/Big Sisters' game. He showed an overhead that showed a chart of the past few years and the path taken by their revenues. He said their bottom line peaked in 1992 at \$690,000 and dropped to \$455,000 in 1995 and will probably be about \$400,000 this year.

Mr. Kaufman said the organization's player count peaked in 1992 at 204,000 players. Since that time, attendance has dropped almost 27 percent. The drop has been steady and has not yet hit bottom. They will be off another 10 percent this year. The buys have consistently risen, but most recently have flattened. In 1994, paper games were brought in, and there was an increase. Since then, there has been very little increase at all. He showed a

summary of the impact from tribal gaming from 1992 to 1996. The impact from lost revenues was outlined on the next page. He said that when running a certain size game, if all things are equal and growth is steady, then net can be maintained at high levels. However, in the unfair gaming environment of Eastern Washington, as we lose customers, the size of the hall can be a burden to maximizing net returns. This is an issue we're dealing with as a corporation right now and taking a hard look at. The next overhead showed the impacts that the loss of gaming revenues has had on the program. The organization is down one caseworker position since 1995 and the voluntary recruitment budget has been cut by 10% and will probably be cut by an additional 15% this next year. All staff development has been dropped, as has the training budget. The organization has taken a step down in the quality of its employee medical insurance and dropped staff tuition reimbursement. The organization has also dropped the underwriting of its annual awards banquet and the funding of the equipment replacement fund. The support fund that was used to pay for plants, skill building, troop membership, dental, medical, or counseling needs has also been dropped. Staff salaries were frozen in the fall of 1995 and most of the staff have gone without a salary increase for at least 22 months. It hasn't been a real fun time, but this shows what the organization has been facing. He introduced Barbara Bell, who is a parent with two children in the program.

Ms. Bell said that she is not a professional speaker, but Don asked her to speak in order to paint a picture of the program. She showed photos of her kids, who are each involved in the program. She said she really believes in the Big Brothers/Big Sisters program and is very grateful to be involved with them. She and her ex-husband split up in 1988 and her ex-husband moved to California. She said her son, after being enrolled in the program, went from poor grades to being on the honor role. Her daughter was enrolled in the program because her brother was enrolled in the program. Her daughter was 10 years old at the time and the big sister she was matched with was 16 years old, thus it was a true little sister/big sister relationship. Her big sister was a good influence on her life. Her big sister was a good student, a Catholic, and the Pharaoh's Lilac Princess last year. Her big sister is now in college and they continue to have a relationship. She said her ex-husband moved back to the area a few years ago and now her son lives with him, but she knows the big brother that he had is very helpful to him.

Ms. Bell said that she felt that a free program like Big Brothers/Big Sisters was a blessing to her family and she really appreciated the opportunity to be involved. Her daughter sees her big sister as a role model who does not smoke, drink, do drugs or plan to have sex prior to marriage, so she has been a positive influence.

Mr. Kaufman said he would field any questions from the Commission at this time. **Commissioner Garrison** asked how many employees there are and what the average salary is; **Mr. Kaufman** said there are 14 employees, and the average professional salary is about \$45,000. The case workers are long time staff that have been with the organization from 6 to 19 years. **Commissioner Garrison** asked about the increase in rent; **Mr. Kaufman** said he did not think the rent increased at all; **Commissioner Garrison** apologized for the mistake and said she was looking at the incorrect column. **Mr. Kaufman** said the organization is purchasing its buildings so in a true sense the organization's costs are actually decreasing because they pay less interest every year as the amount of the debt decreases.

Commissioner Ludwig asked if the total of about \$700,000 is principle on the mortgage; **Mr. Kaufman** answered that he believes that figure is interest and appreciation.

Director Miller said that the organization had their own building and a few years ago they moved into a new building adjacent to their old building. The organization kept the old building and rented it out to another organization. He asked what impact that other organization's game has had on the overall performance of Big Brothers/Big Sisters. **Mr. Kaufman** said the organization feels that when all competition was equal and they weren't competing with slot machines, both organizations were building and were profitable. As the marketplace tightened up, fewer bingo players were willing to come to bingo halls. The reasons for this are numerous, but primarily relate to the other entertainment opportunities available to the player in the tribal setting. The other organization's game may be a detriment in this type of a marketplace. **Director Miller** asked if there has been an analysis of what the future holds; **Mr. Kaufman** said the Board just commissioned a market study to determine if the location is right for the organization.

Chairman Heavey asked if the organization receives funds from any other source; **Mr. Kaufman** said the organization receives a little bit of outside funding but not much. United Way gives the organization about \$16,000

per year. Due to Big Brothers/Big Sisters affiliation level, they are not a full member with United Way, thus they only get designations. The organization rejoined United Way at this level because it perceived United Way as a potential safety net. What has happened in United Way is that they are feeling the same restraints that everybody is. Their revenues have flattened the last three years and as Big Brothers/Big Sisters needed the safety net, they have not been able to step up and help. The organization has created some other fund raisers, one of which is "Bowl For Kids' Sake," which has netted about \$38,000 this year. There have been some ups and down with that particular program. In the past, they were able to recruit more bowling teams, but bowling has declined also, and one bowling alley shut down completely. Big Brothers/Big Sisters is also attempting a major raffle. It's one of the bigger raffles in the state with 5,000 chances and 250 prizes for a one in twenty chance of winning a decent prize in the prize pool.

Commissioner Garrison asked about the voluntary recruitment cuts; **Mr. Kaufman** said their business is to attract adults to become big brother or big sister volunteers. Newspaper advertising, bill boards, TV ads, etc., are costly. Traditionally, the organization has been buying TV and radio campaigns. **Commissioner Garrison** asked if the organization pays people to go door to door to solicit contributions. **Mr. Kaufman** said the organization does not pay people to go door to door. It has been a very interesting transition over the years. He said he has been with the organization for almost 25 years and he remembers the days of cake sales and car washes to raise funds as well as the days of a full member agency status with United Way where the organization received nearly one third of its budget from United Way. He also remembers when the organization began bingo and within 12 months discovered that bingo was so productive that there was no longer a deficit in the budget. The organization felt it was inappropriate at that time to go out and continue to raise money in the community. The organization does not have a lot of the traditional things in place. The organization just recently committed to a development director's position in their agency. They've just started with that particular part of fundraising, where their staff will be working with people on a one on one basis and asking them to contribute. The organization will be having annual campaigns. At that point in time, the organization was generating enough money to give away a little bit to the community to build up its endowment, and it probably wasn't appropriate for the organization to develop other fund raisers that would take away from nonprofits in the community. **Commissioner Garrison** said she has a personal opposition to paying people to go door to door; **Mr. Kaufman** said the organization's campaign will not be a door to door type of campaign. It will be a business person's campaign where the organization will speak to individuals who are capable of giving a gift.

Commissioner McLaughlin said she has fiscal year 1994 and 1995 before her and sees a lot of change; she asked if there is more income coming in for 1996 in bingo and pull tabs. **Mr. Kaufman** said no, they expect a drop from \$455,000 to about \$400,000 in net revenue this year. He said they have cut costs further, have dropped sessions, and have tried to remain competitive.

Commissioner Ludwig moved to adopt the staff's recommendation to approve Big Brothers/Big Sisters of Spokane County as a charitable organization authorized to conduct gambling activities in the state of Washington.

Commissioner Garrison seconded the motion. **Chairman Heavey** thanked Mr. Kaufman and his staff for a marvelous presentation. **Chairman Heavey** called for the vote; *vote taken; motion carried with five aye votes.*

QUALIFICATION REVIEWS

Chairman Heavey asked for an abbreviated version of the qualification reviews because it is close to 3:00 p.m. **Director Miller** noted that the staff is requesting temporary certification for two organizations. **Ms. Cass-Healy** said those two organizations are Marauder's Youth Organization and Yakima Greenway Foundation. Staff is asking for temporary certification of Marauder's Youth Organization because this was the first year that the organization was required to submit and staff is going through an educational process with them to make sure that they understand how to submit the information so that staff can determine whether they are making the requirements. Staff is asking for temporary certification of Yakima Greenway Foundation because they did not meet the requirement for spending 60 percent of their gambling proceeds toward providing program services. **Chairman Heavey** asked what the organization has been spending their money on. **Ms. Cass-Healy** said they spent almost \$300,000 in program services, and they didn't make the exact percentage requirement.

**MARAUDER'S YOUTH ORGANIZATION, Longview
and
YAKIMA GREENWAY FOUNDATION, Yakima**

Commissioner Garrison said it is stipulated that there be a trial period until July 1, 1997 for Marauder's Youth Organization and moved to approve the temporary qualifications of the Marauder's Youth Organization and the Yakima Greenway Foundation. **Commissioner Casey** asked about Yakima Greenway and its 1995 total revenue of \$900,000. \$630,000 of that comes from non-gambling, so the gambling revenue must equal \$270,000. **Ms. Cass-Healy** said it's tricky because this is calculated differently in that a certain percentage is applied to the number as opposed to just looking at what the numbers are here in front of you. **Mr. Bishop** said the rule calls for the use of the same proportional share. In this case, there is two thirds non-gambling and one third gambling, so the percentages remain the same. Therefore, of the \$373,000 spent, two thirds of that would go to non-gambling revenue and one third to gambling revenue. **Commissioner Casey** noted that the in-kind contributions is not money. To her, this number is not a good number. **Commissioner Ludwig** seconded the motion. **Chairman Heavey** called for the vote on Marauder's Youth Organization. *Vote taken; motion carried with five aye votes.* **Chairman Heavey** called for the vote on Yakima Greenway Foundation. *Vote taken; motion carried with four aye votes; Commissioner Casey voted no on Yakima Greenway Foundation.*

**BIG BROTHERS/BIG SISTERS OF TACOMA-PIERCE COUNTY
and
SPOKANE YOUTH SPORTS ASSOCIATION, Spokane**

Commissioner Garrison moved to approve the qualification of these organizations. **Commissioner Casey** seconded the motion. *Vote taken; motion carried with five aye votes.*

COMMENTS FROM PUBLIC AND/OR PUBLIC OFFICIALS

KALISPEL TRIBE OF INDIANS, Presentation and Public Comment

Topic: Whether the Kalispel Tribe's Proposal to Operate a Casino in Airway Heights Would be Detrimental to the Surrounding Community

To obtain a copy of these minutes, call the Gambling Commission, Public Affairs Office at (360) 438-7654, ext. 374.

Chairman Heavey called for an executive session. He adjourned the meeting.

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING FRIDAY, NOVEMBER 15, 1996

Chairman Heavey called the meeting to order at 9:30 a.m. at Cavanaugh's River Inn, Spokane, Washington. He introduced the WSGC staff and Commission members present.

MEMBERS PRESENT: EDWARD HEAVEY, Chairman; CURTIS LUDWIG, Vice Chair; LIZ McLAUGHLIN, JUANITA M. GARRISON, and KATHLEEN Q. CASEY.

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and SUSAN GREEN, Executive Assistant.

APPROVAL OF THE MINUTES FROM THE OCTOBER 10-11, 1996, MEETINGS

Commissioner McLaughlin moved to accept the minutes from the October 10 & 11, 1996, Commission meetings in Chelan, Washington, as set forth in the agenda packet; **Commissioner Casey** seconded the motion. *Vote taken, motion carried with five aye votes.*

STAFF REPORTS

CARD ROOM ENHANCEMENT PROGRAM TEST

Ms. Winslow said a number of the operators in this test began the new activity in August. Some have not started operating under the terms of their contract because they are still waiting to complete their surveillance systems. She said the first page of the hand-out shows a listing of the gross receipts comparisons for the months of July, August, and September. The month of July is provided to give an idea of what the activity level was prior to the start of the test. Some of the information wasn't collected at report date but at least four of the operators had a significant increase in the amount of gross receipts collected, possibly due to their fee assessment methods. Staff is assuming that the rake and the by-hand collection methods have made the significant increase in the gross receipts for these organizations. There is also a link to the jackpot prizes, which draws a bigger crowd. The second hand-out is the monthly report summary, which shows the licensees and the various types of fee assessment methods that are levied (administrative fee, time, rake or by-hand), and the total fee assessments for the month of September. It also shows the jackpot balance at the last day of the month and prizes awarded during the month. Staff plans to provide information on the single highest prizes and whether or not organizations are using the higher wage limits in future reports.

Ms. Winslow said one item not in the packet that she would like to cover is card game starters. Some of the individuals who start games are paid a fee and some are playing on their own; nonetheless, they are just there to start a card game. Sometimes the card room operations aren't able to get a table going unless they have a game starter there. Approximately 14 card rooms around the state were reviewed and the results show that each one has a different way of utilizing game starters. Staff is looking toward trying to develop some consistency with regard to how card rooms utilize game starters. An issue that has come up is that card room licensees are

reimbursing some people who aren't licensed for their fee assessments. Staff will be sending out notices to those establishments to let them know that they only have to reimburse card room licensees and the accountability for fee assessments be reimbursed to these individuals needs to be a little clearer to WSGC agents. A record keeping format will be provided to licensees for future use to help with this.

Another issue is that of name tags for employees of the organization who are game starters. The staff has not made a decision regarding this issue to date. It is a topic of heavy debate. The licensees have informed the WSGC staff that most players know who the game starters are and their photos are also posted on the wall with their individual licenses. This shouldn't be a problem, but some of the licensees are hesitant to use name tags. This topic will be discussed at the executive management team level and there will be a recommendation regarding this issue at a later date.

Commissioner Ludwig noted that Diamond Lil's doesn't seem to be affected by being located close to the Muckleshoot Casino. **Ms. Winslow** said that Fred Steiner operates a very good game and his activity level has increased quite a bit. He markets that game very well and is considering looking for another card room location. **Director Miller** said Mr. Steiner also is operating one of the largest card rooms in the state. The rake and the size of his jackpots is really changing his profits. He advertises and markets very well and is competing quite well.

Commissioner Garrison asked about the card rooms with profits that were a little bit lower in the month of September. **Ms. Winslow** answered that staff hasn't received any feedback on that issue yet but the staff is assuming that it might possibly be an end of the summer slump and is expecting an increase. **Director Miller** said that the staff does not know how this program is going to play out, but many people believe that there will be fewer card rooms when the program is done. Based on factors like competition, comfort, marketability, and management, there will probably be some changes in the number of card rooms in a given area.

Chairman Heavey noted that some of the organizations in the program do not have any income figures for either one or two months. **Ms. Winslow** said that information wasn't gathered at report time but it will be included in next month's report. Some of the organizations didn't gather the information because they hadn't started the actual test; however, the staff wanted to show on this report what the card room activity was prior to starting the program and then after starting the program. **Chairman Heavey** asked if information can be added to note when the organizations started the program. **Ms. Winslow** suggested that the staff could add the fee assessment information to the gross receipts comparison and that would give an idea of when the activity increases.

Commissioner Garrison noted that the Mars Hotel's gross receipts have doubled, but they are not taking a rake. **Ms. Winslow** said they charge by hand, which is a little different from the rake in that the rake comes from the winnings and the by hand method is to charge for each hand that is played and is an increase over time.

Mr. Saucier, Mars Hotel Corporation, responded from the audience. He said that his establishment has increased from one table to five tables and increased fees from 25 cents per hand to 50 cents per hand or \$1 per hand if the player wants to play the progressive jackpot. He said that he has found, with the increased number of tables and the increase in fees, that his revenue has gone up but the number of players has gone down. Now he is trying to find the market to get the number of players back up. He said that, regarding Diamond Lil's, he just spoke with Fred Steiner and his new numbers are going to show that he did over \$200,000 last month and he has more than tripled his numbers. One of the things that the test has done for him that he could not do before is it allows him to spend \$20-30,000 per month in advertising. He can get the return on his investment now because he has the increased number of tables and he can take the rake. He certainly is a good success story for the industry.

Director Miller also pointed out that, a few years ago, there were no center dealers. Now Fred Steiner has center dealers at every table. Those center dealer are licensed and are paid salaries. Center dealers make for a better regulated game. Mr. Steiner has always been one of the most visionary licensees when it comes to Washington Poker and it has worked out really well for him.

Chairman Heavey asked if there were any further questions; there were none. **Chairman Heavey** thanked Ms. Winslow for her presentation.

NET INCOME RULE IMPLEMENTATION

Ms. Cass-Healy said that, a number of years ago, the WSGC staff was approached by members of the non-profit gambling industry with a request to look at economic factors impacting the profitability of their bingo games. The Commission at that time implemented a moratorium so that staff could study the issue. Ben Bishop, along with other staff and members of the industry, formed a task force to look at all issues impacting profitability. The task force also looked at other opportunities to gain income. The rules on the agenda today are a result of the efforts of the task force with additional staff input. She pointed out some differences in the new rules from the old rules. One difference is the minimum net return percentage required has been decreased by one percent across the board for Class E and above licensees. It also allows the inclusion of amusement game net income, raffles conducted in conjunction with bingo, and fees collected for tickets for speed bingo in the calculation for minimum net return. If an organization is out of compliance, the rule provides for the licensee to be downgraded to the level they are operating at for net return purposes up to a maximum of two classes for the first violation. After that, an organization may continue to be downgraded over time all the way down to a class D, depending upon their compliance. She reminded the Commission that this is in yearly increments because the licensee's measurement period is based on a year even though staff monitors the licensee on a quarterly basis.

Ms. Cass-Healy said that if an organization does not have a positive cash flow, they are subject to summary suspension under the new rules. A positive cash flow is defined as the net income from the punchboards and pull tabs and the other gambling activities that have been mentioned, but the licensee can add back non-cash amounts such as depreciation and amortization.

Ms. Cass-Healy said a licensee can petition the director if they believe they fall under certain variances allowed in the rule. In other words, if they are measured and don't meet the requirements, they may petition the director in order to not be downgraded. Some of these variances are spelled out in the rule packet. Finally, if the petition to the director is denied or a licensee is downgraded, they may petition the Commission to operate at a higher level. She said that Ms. Tellefson will point out during the rule presentations that staff recommends making the new rules effective as of December 31, 1996. The reason for this is if staff starts measuring games after that period of time, several games will be allowed to operate out of compliance for one full measurement period beyond 1996. Staff felt that in order to be equitable to those games operating in compliance or who will be measured in 1997, that these rules needed to be implemented immediately. She then asked if there were any questions.

Director Miller said this is one of the most complicated areas that the agency deals with. This area has been worked on for many years. It all comes down to what is an organization doing with its money. The mission of the agency is to make sure that the organization is making money for its purpose and not simply for salaries and wages. There are many jurisdictions around the country that don't have net income or prize payout requirements and there is very little return back to the organization. He complemented the industry and the WSGC staff on the work that they've done on this very large and complicated project that will hopefully provide relief for a few years.

Chairman Heavey thanked Ms. Cass-Healy for her staff report.

AUTHORIZATION OF PROGRESSIVE PULL TAB GAMES

Amendatory Section **WAC 230-02-240**
Commercial gambling manager defined.

New Section **WAC 230-04-143**
Licensing of commercial gambling managers.

Amendatory Section **WAC 230-04-145**
Licensing of charitable or nonprofit gambling managers - Application procedures.

Amendatory Section **WAC 230-08-025**
Accounting records to be maintained by distributors and manufacturers.
New Section **WAC 230-30-025**
Progressive Pull Tab Games - Definitions - Restrictions - Manner of Conducting - Record Keeping - Approval.

New Section **WAC 230-30-040**
Step-up Pull Tab Games and Carry-over Jackpots - Definitions - Restrictions.

Amendatory Section **WAC 230-30-070**
Control of prizes.

Amendatory Section **WAC 230-30-075**
Punchboard and pull tab prize restrictions - Minimum percentage of prizes available.

Amendatory Section **WAC 230-30-080**
Pull tab dispensing limitations.

Amendatory Section **WAC 230-30-102**
Pull tab series assembly and packaging.

Amendatory Section **WAC 230-30-103**
Standards for construction of pull tabs.

Ms. Tellefson said these rules authorize new types of pull tab games, progressive jackpot prizes on pull tabs, and bonus pull tab games. Bonus pull tab games have been renamed from "step-up pull tab games" because it provides a better description of the way the system works. In a bonus pull tab game, a player has the opportunity to open a window and pick a higher prize or a bonus prize. Those types of games will be authorized in this rules package today if the Commission approves it. The rule package also authorizes jackpots which are attached to the bonus game and can be carried over from one game to the next if they are not won. In addition, the package authorizes an increase in the maximum prize from \$500 to \$2500 for carry-over jackpots and to \$5000 for progressive jackpots. Staff is recommending adoption of this rules package.

Chairman Heavey asked if anyone has comments on these rules; **Robert Saucier**, Mars Hotel Corporation, said he is representing the Washington State Licensed Beverage Association and the Washington State Recreational Gaming Association. Both associations support this rule package. He complemented Director Miller and the WSGC staff for working with the industry on this rules package. He said he thinks the progressive pull tabs are not going to be the panacea for a lot of the smaller operators, particularly due to the high cost of the equipment. He said he had a comment on one of the rules, WAC 230-30-025 -- Definitions, Restrictions, Manner of Conducting, Record Keeping, and Approval. He referred to paragraph two, (d), which deals with the limitations of the games. He said that the purpose of the limitation of the games was to mitigate any impact an excessive amount of games may have on the WSGC staff if quite a few of the games came into the state all at once. He understood that, and wanted to help minimize that impact. Originally, the staff talked about a six month period. His organization's recommendation is to rather than having the effective January 1, 1998 as the cut off, to leave it open based upon what the impact actually is and either leave that up to the director himself to make that choice or perhaps subject to Commission approval. If it is done in that vein or states, "effective January 1, 1998 or upon approval by the Commission," it would not require formal rulemaking process to change this if indeed it warrants being changed.

Chairman Heavey asked if Mr. Saucier was suggesting that the words "effective January 1, 1998" be removed and that it just read "the Director may...."

Mr. Saucier said that is one option, or if the Commission chose, it could read, "effective January 1, 1998 or upon approval by the Commission." That would require simply a vote of the Commission without going through formal rulemaking process.

Commissioner Ludwig asked Director Miller what the WSGC staff position is on this matter.

Director Miller said it is a new program and it is simply a matter of getting ourselves adjusted to it. Second of all, it is nice to have a little window of opportunity not to have to be approached for a change. Quite candidly, whichever way the Commission deems appropriate is fine from staff perspective. He said he doesn't see himself approving above that for the first six months anyway until staff has their feet well on the ground and know the program. He wants staff to be able to adequately regulate this activity. Staff does not anticipate many operations going above that size anyway given the cost of these machines. A bank of 10 machines is roughly \$70,000 just to put in place. He said he has no objection with the discretion, he said staff just wanted to buy some time; that was the intent. The issue of being effective January 1, 1998, from a staff perspective, is not that important. Whether the Commission wants the director position to approve these or whether the Commission wants to approve these at a Commission meeting is a policy call and whatever the Commission deems is fine with the staff.

Commissioner Ludwig moved for an amendment to WAC 230-30-025, Paragraph 2(d), by deleting the words "effective January 1, 1998." **Commissioner McLaughlin** seconded the motion. **Chairman Heavey** asked to add the following language: "if the licensee is in full compliance with all regulations and the director determines it is not detrimental to the Commission or the public." **Commissioner Casey** said she has some concern similar to what Chairman Heavey is professing. This is so wide open that it seems to her that it leaves the director open for a lot of criticism. There is no basis for approving or disapproving one person's increase over another individual's increase. **Director Miller** said that another solution might be to bring the approval/disapproval to the Commission. That way the Commission would look at each one. **Chairman Heavey** asked if the language could be changed to "subject to Commission approval." **Director Miller** said it is a new program and the progressive part of it is just one limited aspect of it. **Commissioner Casey** moved to strike the language "effective January 1, 1998," and add the language "if the director determines that the licensee is in compliance with all regulations and the increase is not detrimental to the Commission's or the public's interest." **Commissioner McLaughlin** seconded the motion. **Chairman Heavey** called for the vote on the amendment to the rule. *Vote taken; motion carried with five aye votes.*

Commissioner Ludwig moved for final adoption of these rules as amended; **Commissioner Casey** seconded the motion. *Vote taken; motion carried with five aye votes.*

Director Miller said he wanted to thank Ms. Winslow for the work that she did on this rules package, which was a major undertaking. Secondly, he thanked Ms. Tellefson's staff for the new format for drafting rules and the very good job that they did.

BINGO TASK FORCE RULES

New Section **WAC 230-02-105**
Annual measurement period—defined.

New Section **WAC 230-02-123**
Charitable or nonprofit organizations—Net return defined.

New Section **WAC 230-02-138**
Positive cash flow from the bingo operation—defined.

New Section **WAC 230-02-362**
Primary market area defined.

New Section **WAC 230-02-364**
Secondary market area defined.

New Section **WAC 230-02-366**
Impact market area defined.

New Section **WAC 230-02-455**
Social pastime defined.

New Section **WAC 230-02-503**
Fund raising defined.

New Section **WAC 230-02-530**
Circumstances outside the control of the licensee—defined.

New Section **WAC 230-02-535**
Permanent interruption of customer flow—defined.

New Section **WAC 230-02-540**
Temporary interruption of customer flow—defined.

Amendatory Section **WAC 230-12-050**
Extension of credit, loans, or gifts prohibited—Limited exception.

New Section **WAC 230-20-059**
Maximum gross gambling receipts for bingo games—Prize and expense limitations—Minimum net return required.

New Section **WAC 230-20-060**

Petitioning the director for a variance from net return requirements.

New Section **WAC 230-20-062**

Minimum net return from bingo games—Sanctions.

Repeal **WAC 230-20-064**

Maximum receipts, prizes, and expenses for bingo games—Net income required.

Amendatory Section **WAC 230-20-102**

Bingo Prizes—Record of winners.

Amendatory Section **WAC 230-20-120**

No free food or beverages to be provided at bingo games—Exceptions.

New Section **WAC 230-20-125**

Discounts and promotional gifts—Authorized—Limits.

Amendatory Section **WAC 230-20-190**

Bingo Card Prices.

Amendatory Section **WAC 230-20-242**

Activities conducted as a part of bingo games—Authorization—Restrictions.

New Section **WAC 230-20-249**

Speed bingo—Operating procedures—Restrictions.

Amendatory Section **WAC 230-20-325**

Manner of conducting a raffle.

Ms. Tellefson said Item 4 is a set of 23 rules having to do for the most part with the net return program for charitable/nonprofit licensees. There are a couple of issues that came up in the study sessions and staff has some proposed changes for the Commission. Under Item 4(M), Table 1 goes up to a class "M," which is over \$4 million in gambling receipts. There are a number of licensees that fall well above that figure (\$6 million and above) and there has not been separate license classes for that in the past. Under the rules that staff is proposing, there are certain sanctions for failure to meet net income requirements that would result in downgrading licenses in some cases, sometimes as much as two whole license classes. For those licensees that are in the top classes, in some cases, it would result in a cut of \$3 million in gross gambling receipts. Staff is proposing at this time to add four new license classes, which would be N, O, P, and Q, and would range from \$4,500,001 to \$5,000,000 (N), \$5,000,001 to \$5,500,000 (O), \$5,500,001 to \$6,000,000 (P), and \$6,000,001 and above (Q). The net return requirement would be the same for those license classes and there would not be additional fees either. It would be for purposes of these rules only, and would make it more equitable in terms of addressing those higher class licensees when it comes to the net return requirements and whether or not they have to be downgraded.

Chairman Heavey asked if the prize payout limits and the minimum net return remains the same. **Ms. Tellefson** said that is correct.

Commissioner McLaughlin asked how many gambling establishments make \$6 million or better.

Director Miller said there was only one establishment above \$6 million, but there are more organizations that are above \$4 million.

Commissioner Ludwig moved to amend WAC 230-20-059 to add those four additional classifications; **Commissioner Casey** seconded the motion.

Commissioner Garrison asked if this affected the other license classes; **Ms. Tellefson** answered that it would have no effect on the other license classes.

Chairman Heavey called for the vote. *Vote taken; motion carried with five aye votes.*

Ms. Tellefson said the staff has one more suggested amendment to the rule. It would be to add a subsection three to the rule which would state "This rule will apply to organizations with measurement periods beginning on or after January 1, 1996." This would allow staff to measure those with measurement periods or fiscal years that end

December 31, 1996. **Chairman Heavey** asked what the effect would be if the Commission doesn't make the change. **Ms. Tellefson** said the effect is that potentially there could be an eighteen month period where there is no enforcement because the measurement period goes back one year and then there is a six month period after that before a license is actually downgraded or a license is affected in one way or the other. It would add a significant period of time to the implementation of the rule for certain licensees.

Mr. Bishop said there is another issue that actually favors the licensees by doing this. The requirements are less stringent in the new package than they were in the current rules. In a legal situation, the law judge would apply the old rule without this amendment. **Chairman Heavey** asked Mr. McCoy if the Commission can make this rule retroactive.

Mr. McCoy said the effect of the rule is not retroactive. It is effective when it is adopted, but the measurement period is identified as beginning January 1, 1996. That does affect a small group of licensees, but the application of the rule is not retroactive.

Chairman Heavey asked for any public comment on this amendment.

Larry Gufstason, of Spokane Athletic Round Table asked if this means that if a group is out of compliance during the moratorium year then that will be counted against them to determine where they stand in 1997. So in effect, the moratorium doesn't protect the group.

Director Miller said the moratorium gave an opportunity for groups to operate without sanction during 1996, it was not designed for protection. Those games that were operating in violation were given time to correct the problem. He also said that he felt it was a pretty well known fact that once the moratorium expired, the old rule would come into effect. Staff is simply trying to put the new rule in effect and apply it to organizations. There is an alternative discussed by the staff to offer licensees a choice as to which rule they would like to be under, but the staff feels that most licensees would choose the new rules because they are much more fair. The intent of the rule is simply to keep order, not to punish those organizations who are out of compliance. The purpose of the moratorium was to allow an organization one year to operate and correct their deficiencies and not face sanctions during the study period.

Commissioner Casey asked if the net effect is that once the moratorium is over, licensees would go back to the old rule unless there was a new rule in place to measure by. **Director Miller** said the new rule is much more flexible and takes into account the current environment. If a licensee were to challenge the application, staff would then argue that they would be under the old rule and the ALJ would be forced to apply the old rule because that was in effect at the time. The staff feels most licensees would not challenge this and it is simply to their advantage to go forward with it. There is no other way to bring this into effect without having a huge window of problems.

Commissioner Casey said that doesn't mean the moratorium didn't help; organizations have been in the moratorium for a year at that point. **Director Miller** said the last sentence on the moratorium says "the moratorium, upon issuing a mandatory downgrade as set forth in subsection (7), ends when the Commission completes the study or January 1 if the study is completed, whichever occurs first. The moratorium extends only the issuing of downgrades while the moratorium is in effect. It does not affect any other requirements. Once the moratorium is lifted, the ability to issue downgrades would be gone. Licensees have complete notice of this effect.

Don Kaufman, Big Brothers and Big Sisters of Spokane County, said this is a difficult issue because the licensees all try to make adjustments in the games and no adjustments can be made over night. They have to take a long time to adjust so that they don't lose more of the crowd in the process. He said he had given the Commission a lot of data yesterday that shows the problems that are happening with the crowds here in Spokane County, including being affected by what is considered to be illegal gaming surrounding this area. As they continue to lose crowds, it is going to be very difficult to come into compliance with these rules. It's going to be close, and they have shown that they are well-managed. They're keeping the payout down, but he can see where a number of licensees in Spokane County are going to be coming before the Commission to petition this issue. Without bingo, the organizations can't survive because they have to have that income. What they've done is work on a moratorium. He's worked with the rules committee and understands that whole issue. Big Brothers and Big Sisters is one of

the licensees whose new year starts January 1, 1997. They are probably most affected by this rule and will be coming under scrutiny almost immediately. He said it wasn't his understanding until he got to this meeting that the rule was going to be implemented immediately. That is the confusing and discouraging part. He said that the petitioning process is going to be better used in the future.

Commissioner Ludwig asked Mr. Kaufman what his situation would be without this rule. **Mr. Kaufman** said his organization is currently operating at about 13.5 percent net on the year. His organization has a class "N" license and is about \$350,000 above the \$4 million mark. This means that the situation is manageable and the organization could drop back a license class if they had to. The organization would like to get to the 14 percent figure in order to be within the two percent and to be able to tell the Commission that they are managing a good game, keeping the payout down, are being impacted by the illegal gaming that surrounds the area, and would like to be able to continue to operate. That would be the organization's ideal scenario. The organization is going to be very close as to whether or not they get into that 14 percent range. Some of the things that will impact the organization next year that WSGC staff is offering in the new rule are not available to the organization this year. The organization could add its amusement game income back in, but it can't add the three number speed income back in. The organization could show the Commission what it has made in speed bingo and, as part of that process, if the organization was allowed to use some of that revenue, they might come very close to 14 percent.

Commissioner Ludwig asked Mr. Kaufman what his time frame would be so far as having to comply under the current rule. **Mr. Kaufman** said that as soon as the moratorium runs out on December 31, 1996, he was under the assumption that the new rule would take effect and the organization would be measured from that point forward instead of on last year's performance.

Chairman Heavey asked if this whole rules package would have the same effective date so that, in effect, what is being said is that these new rules are effective last January.

Ms. Cass-Healy said that if these rules are passed, the staff will be sending a letter out informing licensees of the effective date and allowing them to provide the Gambling Commission with their amusement game and speed bingo income for measurement purposes. **Chairman Heavey** said therefore the effect is to make the rules effective last January. **Ms. Cass-Healy** answered yes, but only for the measurement. **Director Miller** asked for clarification as to whether the games they have operated last year will be part of the measurement for the entire year. **Ms. Cass-Healy** answered yes. **Mr. Bishop** said that the speed bingo currently being offered is not an authorized activity so the organization does not have any receipts from that activity. The organization does have speed bingo, but there is no exception in that particular rule allowing that to come

forward. **Mr. Kaufman** said this is one of the points he is making; there is a bingo rule that says licensees can start playing on January 1, 1997, that will help licensees in 1997's net return but will not impact 1996 and yet licensees will be measured on 1996. It's a difficult situation that the licensees find themselves in. They thought they were planning for one thing and now are told that there is another way.

Commissioner Casey asked what Mr. Kaufman suggests to remedy the situation; **Mr. Kaufman** said his suggestion is leniency and tolerance on the Commission's part over the next year as the organization comes before the Commission with petitions. **Commissioner Casey** said that there would then be a large amount of time where there is no measurement. **Director Miller** said then there would be no measurement until 1998. **Mr. Kaufman** said that he understands the dilemma and appreciates the problem. Maybe a compromise is to let organizations take their speed bingo revenues from the past year as part of this process to look at on a one-time basis. **Director Miller** pointed out that the rule contains a procedure for petitioning the director for a variance. In it, the director has been given a lot of responsibility along with the staff to look at each application for relief. There are numerous factors that will be applied to each licensee individually. If the staff decides to downgrade an organization, the organization has the absolute right to come before the Commission and challenge the decision. He said the other alternative is to have a two system approach where the old rule and the new rule remain in place and the licensees can choose which rule they wish to fall under. In the old rule, it is quite clear that upon completion of the moratorium, the relief is gone. He said he doesn't know how this could have been misleading. He also said there is a lot of relief here and this situation need to be played out. He said he doesn't see an unequitable situation here at all.

Commissioner Ludwig asked if they would be better off with the old rule; **Mr. Kaufman** answered that the organization would probably not be better off under the old rule. **Commissioner Casey** said the director and the staff have been extremely understanding and have gone to great lengths to make things work for people, particularly those that are trying to compete with slot machines. She doesn't see why that would change and she doesn't see why any licensee would be concerned that it would change.

Mr. Gufstason said his organization also had the same view as Mr. Kaufman in that they thought that the moratorium would protect them during this year and then next year they would be faced with compliance with the new rule. That is the way they approached 1996.

Commissioner Garrison said, what she understands is that the moratorium was a period of time to improve circumstances. She said she doesn't see how anyone could interpret that as being "protected" and she asked if this was wrong. **Director Miller** said that there was a crisis in the state of Washington in the net income arena and staff wanted to give the licensees relief from immediate downgrade. With the moratorium, the staff basically said that licensees wouldn't have to face downgrading while the issue was studied, but when the moratorium goes away, it's gone. The moratorium went into effect in the Fall of 1995 and there has been a whole year to study this problem. If the rule were withdrawn today, the old rule would be in effect and would be applicable to each one of these licensees and they would be facing far greater ramifications. He said that he understands the concern, but some of these licensees have been out of compliance for some years. The staff has to keep order in this arena and this is the way to do it. **Commissioner Garrison** asked if the staff has always been talking "relief" and not "protection." **Director Miller** said yes, from staff's perspective, that's the case.

Mr. McCoy said he wants to clarify the retroactivity question. He said this rule will be effective 30 days after filing. The effect of the addition of paragraph three is not to change the effectiveness of the rule, but to identify a class of licensees to which it applies. It doesn't change the application of the rule, it just changes who it is applied to.

John Beadle, Seattle Junior Hockey, said he served on the bingo task force and this was a very complicated issue. During the meetings, he said it was never brought up that the rules would become effective on December 31, 1996. He said he was under the impression that the majority of the rules are implemented on either January 1 or July 1 of each year unless another date is specified. His assumption was that this rule would become effective on January 1, 1997, and that the first measurement period would be those licensees that had a fiscal year after that date.

Director Miller said this issue did come up just recently. In trying to figure out what to do about the overlap, the staff decided it would be most fair to make it effective for everybody. For those whose fiscal period ends on March 31, they have to go back to March 31, 1996, and so on. The staff is trying to be consistent here and the problem is that if it's not done this way, then there is a group of licensees that end on this year and who would have basically a year-and-a-half treatment, which would be a disparity to other licensees. The staff thinks this is the fairest way. The other option is to have a dual rule system.

Commissioner Ludwig asked what Mr. Beadle thinks about the option of utilizing the old rule; **Mr. Beadle** said the old rule would not be an option for them and he doesn't think anyone would use the old rule.

Commissioner McLaughlin said she knows of at least two meetings where it was discussed on the record that once the moratorium is over, the old rule would go into effect.

Director Miller said there was no intent to confuse anyone. This is a difficult situation to solve but there is tremendous opportunity to appeal and present a case under the new rule. He assured everyone that the staff will look at each situation very fairly.

Commissioner Casey moved to amend the rule by adding a section three, which would read, "This rule will apply to organizations with measurement periods beginning on or after January 1, 1996." **Commissioner McLaughlin** seconded the motion. *Vote taken; motion carried with five aye votes.*

Ms. Tellefson said that for item 4(N) and item 4(O), the staff requests adding the exact same language that was just approved for item 4(M). Those rules are all part of the same net income program. The added language would create a section five for both rules.

Chairman Heavey called for any public comment on this change; no one came forward.

Commissioner Casey moved for approval of adding the proposed language to agenda items 4(N) and 4(O); **Commissioner McLaughlin** seconded the motion. *Vote taken, motion carried with five aye votes.*

Ms. Tellefson directed the commissioners to a handout showing some impacts from the net income and bingo rules and the progressive pull tab rules that are before the Commission today. This handout shows the staff hours that will be reallocated from other programs. The staff is not asking for any additional FTEs and requests that these rules become effective 30 days after filing.

Greg Murray, president of the WCCGA, said his group supports these rules as they are proposed and he thanked the director and the staff for their hard work in putting this together. His group thinks this is a great step forward and is a positive step in dealing with the net income requirements.

John Beadle asked about the amended rule on net income. He said if someone's fiscal year ends October 31, when would that licensee be evaluated. **Ms. Cass-Healy** said it would be whenever their fiscal year ends, even if it's October 31.

Director Miller said that the only other way is to have the same date for everybody. It then becomes a staffing issue and puts a great burden on the staff and would require more employees to do all their work at one point in time. Hopefully a year from now this won't be an issue.

Mr. Bishop asked about WAC 230-20-249. He said he recalls some concern at the last meeting about what this rule covered. **Ms. Tellefson** said that, in response to Commissioner Casey's concerns about speed bingo and whether it applied just for the use of hard cards or all cards, the word "hard" was deleted in section 1(a). Deputy Director Bishop also had a proposal to clarify the type of speed bingo that this rule applies to. This would be done by adding the term "three number speed bingo" to the title and various places within the rule. **Mr. Bishop** said that in every place where it states "speed bingo," it should be changed to "three number speed bingo." He said that he wasn't certain it had to be changed every time and that it could say in the definitions

"For purposes of this section, three number speed bingo is defined as a bingo game that...". **Commissioner Casey** said she appreciates the change because, for newer licensees and all current licensees who have not been part of the discussion, this could be confusing.

Mr. McCoy said he is not sure if it constitutes a substantive change and asked for clarification as to what the amendment is; **Ms. Tellefson** said the amendment proposes to add to section 1 the following: "For purposes of this section: three number speed bingo is defined as a bingo game that...".

Mr. Bishop said there is a game that has been around awhile called speed bingo. It is not this type of game because it is played with regular bingo equipment and throwaway cards. However, this game is a new game that is being authorized that deviates from some of the requirements. It had to be put this way because otherwise the accounting functions and the counting of the cards would apply. **Mr. McCoy** said he believes that the change in title does not constitute a substantive change.

Commissioner Casey moved to approve the amendments. **Commissioner Garrison** seconded the motion. *Vote taken, motion carried with five aye votes.*

Commissioner McLaughlin moved to adopt the proposed rules; **Commissioner Casey** seconded the motion. *Vote taken; motion carried with five aye votes.*

(Chairman Heavey left at this time.)

LICENSE FEE AMENDMENTS

Amendatory Section **WAC 230-04-140**
Licensing of public card room employees.

Amendatory Section **WAC 230-04-190**
Issuance of license—Expiration—Restrictions.

Amendatory Section **WAC 230-04-202**
Fees—Bona fide charitable/nonprofit organizations.

Amendatory Section **WAC 230-04-203**
Fees—Commercial stimulant and other business organizations.

Amendatory Section **WAC 230-04-204**
Fees—Individuals.

Amendatory Section **WAC 230-04-220**
Prorating and refunding of fees.

Amendatory Section **WAC 230-08-017**
Control of gambling equipment—Use of identification and inspection services stamps.

Amendatory Section **WAC 230-08-125**
Annual activity reports (~~(by operators of Class A, B, and C bingo, all classes of raffles, and bona fide)~~)—Certain activities operated by charitable or nonprofit ((amusement games)) organizations.

Ms. Tellefson said these are eight rules that increase license fees consistent with Initiative 601. The rules also clarify that, in those particular cases when applicants begin working under a temporary license, the licensee fees are not refundable. There are a couple of proposed changes: In item 5(E) 230-04-204, a new license class was added for commercial gambling manager. The other license classes within that rule had the fees raised in accordance with I-601. It was a staff oversight that neglected to make the commercial gambling manager license fees the same as the charitable or nonprofit gambling manager license fees. The staff is asking to make the fees the same for both.

Commissioner McLaughlin moved that the commercial gambling manager license fee is the same as the charitable or nonprofit gambling manager. **Commissioner Garrison** seconded the motion.

Acting Chairman Ludwig asked for any public comment, no one came forward. *Vote taken; motion carried with four aye votes.*

Ms. Tellefson said the staff has two recommended changes to item 5(G). One is that items 3(c), (d), and (e) are duplicative and are already within the rule at item 3(a)(ii), (iii) and item 3(b)(ii). More specifically, items 3(c) and (d) are identical to items 3(a)(ii) and (iii). Item 3(e), which has to do with progressive jackpot pulltab dispensing devices, was mistakenly left in by the staff and the staff had intended for those devices to be covered under section 3(b)(ii), which is a more general category. The staff is requesting deletion of 3(c), (d), and (e). Renumbering will occur upon refile. The other suggested change is under 3(a)(iii), the word “step-up” is used to modify “pull-tab” and it should be “bonus” instead of “step-up.” This would be consistent with the changes that were made in the other rules package.

Commissioner Ludwig moved to amend the rules as recommended. **Commissioner McLaughlin** seconded the motion. *Vote taken; motion carried with four aye votes.*

Mr. Bishop pointed out an oversight in that when staff modified the bingo net return rule by adding the classes, we probably should add those same classes under this rule. Item 5(c), subsection two, class M over \$4 million should be modified to Class M, N, O, etc. It would clarify that all of those have the same fee. He finally recommended that the language read “Class M and above.”

Commissioner McLaughlin moved to amend the rule as recommended. **Commissioner Garrison** seconded the motion. *Vote taken; motion carried with four aye votes.*

Commissioner Garrison moved to adopt the rules as amended. **Commissioner Casey** seconded the motion. *Vote taken; motion carried with four aye votes.*

CARD ROOM ENHANCEMENT CONTRACTS

Ms. Tellefson requested that the Commission take action on the card room enhancement contracts at this time. She said there are two contracts; one is in the front of hand out packet #1 and the other is loose in hand out packet #2.

THE SHED

Ms. Tellefson said The Shed is asking for one table to use the alternative collection of fees. They have submitted their deposit, and appendix B, which the Commission has approved in all other contracts, is also effective in this contract. Staff recommends approval of this card room contract.

Commissioner Casey moved for approval of the contract. **Commissioner Garrison** seconded the motion. *Vote taken; motion carried with four aye votes.*

HI-LINE LANES LOUNGE

Ms. Tellefson said Hi-Line Lanes Lounge is requesting one table to fall under the alternative collection of fees and one player supported jackpot scheme. They have paid their deposit and all of the terms of Appendix B, which the Commission has approved previously, are consistent in this contract as well. Staff recommends approval of this card room contract.

Commissioner Casey moved for approval of the contract. **Commissioner Garrison** seconded the motion. *Vote taken; motion carried with four aye votes.*

STARTING TIME FOR COMMISSION MEETINGS

Amendatory Section WAC 230-02-020

Time and Place of Meetings

Ms. Tellefson said this rule clarifies that Commission meetings should be held at least quarterly and the date and time for Commission meetings will be set by the Commission with at least two weeks advance notice. This rule is up for further discussion.

Commissioner Garrison asked about the language "should be held at least quarterly at a date and place to be set by the Commission with at least two weeks advance notice." She suggested adding the word "time" so it is consistent. **Vice Chairman Ludwig** asked if the rule would be up for final action in January; **Ms. Tellefson** answered that was correct.

Acting Chairman Ludwig called for public comment; no one came forward.

Vote taken; motion carried with four aye votes.

HEARINGS FOR SEIZURES OF SLOT MACHINES

New Section WAC 2230-50-005 – Seizures – Hearings

Ms. Tellefson said this rule was passed as an emergency and made effective last month. It is continuing on the agenda for public comment. This rule clarifies that the Commission's policy of always holding a hearing when slot machines are seized is put into actual rule form and that hearings will be held. The issue at the hearing is whether the device is actually a gambling device and whether it is an antique or not. Staff recommends further discussion.

Acting Chairman Ludwig called for public comment; no one came forward. **Commissioner McLaughlin** asked if this rule would cover the seizure of all items. **Mr. McCoy** said the statute, RCW 9.46.231, provides a process for forfeiture of seized items. Gambling devices, as defined in the act, are deemed to be summarily forfeited. However, RCW 9.46.235 provides that there is a right to present a defense of the item to be antique and that it cannot be forfeited until that issue is resolved. In order to reconcile both of those provisions, staff created this rule so that there is an opportunity to present the antique gambling device defense. It creates a procedure that is

otherwise not in the statute itself. **Acting Chairman Ludwig** asked if anyone had raised that defense in any pending seizures. **Mr. McCoy** said no, no one had raised that defense. The seizures that have already occurred are already being handled in this manner without a rule.

Acting Chairman Ludwig asked for any further public comment, discussion, or questions; no one came forward. **Ms. Tellefson** said the rule will go before the Commission in January for public comment and final adoption. The rule has been adopted as an emergency rule that is effective for the period of time prior to final adoption.

BINGO AMENDMENTS

Amendatory Section **WAC 230-20-240 -- Bingo equipment to be used.**

Amendatory Section **WAC 230-20-247 -- Keno bingo—Definitions and requirements.**

Ms. Tellefson said item 8(a) is a rule up for discussion and possible filing today. It would allow the use of different types of bingo balls for speed and hidden face bingo games. Staff recommends filing for further discussion.

Ms. Winslow explained that the rule allows for the hidden face and speed bingo balls to be played a little bit differently. There are two sets of bingo balls in play during a bingo session and this adds an additional control in that the balls are going to be different. The balls can't be interchanged because there is a different look to these bingo balls. The staff wants to clarify it because they won't be allowed in the existing rule. It is not a real critical issue, but it is a technicality.

Acting Chairman Ludwig asked for any public comment; no one came forward.

Commissioner Casey moved to file the proposed rule for further discussion; **Chairman Heavey** seconded the motion. *Vote taken, motion passed with five aye votes.*

(Chairman Heavey left again at this time)

PETITION TO AMEND RAFFLE RULE

Amendatory Section **WAC 230-20-325 -- Manner of conducting a raffle.**

Ms. Tellefson said item 9 is a petition by Moneyman Fundraising and there is information in Handout Packet #2 regarding this. The information can be found under tab three and there is a previous AG opinion on this issue. The petitioners are asking the Commission to file this to change a raffle rule. The rules require that all raffle tickets are sold for the same price. This would allow a random method of pricing based on the opportunity for a customer to scratch off a box and determine what the price of their ticket would be. This was, at one point in time, on the Commission's rule books, but there was a sunset clause in it. The petitioner had come before the Commission in 1988 and requested this amendment. It was adopted by the Commission at the time but it expired. Moneyman Fundraising is essentially asking for the same language to be adopted again. At this point, staff is only asking that it be filed on behalf of the petitioner; staff is not making any other recommendations.

Director Miller said this was quite an issue of dispute some years ago. The player scratches off a hidden seal and might pay \$5, \$2, or \$1 for their ticket. The staff did not support this raffle because they felt it was a separate lottery attached to the raffle. The Commission in 1988 did not agree with the staff and they approved it. He said he didn't think it caused great harm and the raffle was not that popular. The staff has no position on the matter at this time, however, the staff will be discussing the issue and will come back to it at the January meeting.

Acting Chairman Ludwig called for any public comment.

Don Grothe, from the audience, referred to the games played in grocery stores and asked if they were legal. **Director Miller** said it is legal as long as no consideration is being paid. It is just a way to make raffles more attractive. In the last few years this Commission has been very open to making raffles more attractive for nonprofit organizations.

Commissioner Casey moved to file this rule for further discussion. **Commissioner Garrison** seconded the motion. *Vote taken, motion carried with four aye votes.*

COMMENTS FROM PUBLIC OR PUBLIC OFFICIALS OR BOTH/GENERAL DISCUSSION

Acting Chairman Ludwig said that he knew there was a request from Mr. Perry Panagiotu to address the Commission, but before hearing that, he asked if there was any other public comment concerning today's agenda or anything else.

Rob Saucier, Mars Hotel, said he would like to update the Commission on comments he made at the last Commission meeting. He showed overhead transparencies of the card room industry's gross revenues for 1985 through 1995 and those numbers are essentially the same. 1996's numbers are now available which were not published last month. He said that it was his understanding that the way the Commission publishes its numbers is that there are four quarterly reports and, at the conclusion of the fourth quarter report, an audit is conducted and apparently the audit is not completed and sometimes there are adjustments between the total of the four quarters and the year end. The trend that was being shown before was that the revenue went from \$17 million to \$18.4 million. However, it has dropped during the last year from \$18.4 million to \$15.2 million.

Acting Chairman Ludwig asked if the number of cardrooms declining would have anything to do with the revenues dropping. **Mr. Saucier** said yes, from 1985 through 1990, there was no real identifiable trend but in 1991 there was a dramatic increase from 95 to 122 cardrooms. We have attributed that to the introduction of blackjack by the Commission at that time. A lot of people thought that would be a real boom for the industry so a lot of new cardrooms got in at that time. Since that time, there has been a steady decrease in the number of card rooms. In the last year, the number of card rooms had dropped from 104 to 90. He asked Director Miller if he knew what the current number of card rooms is now. **Director Miller** said there are probably about 90 or 92 card rooms now, but he does not have the exact number with him.

Mr. Saucier said the last chart shows the difference between 1996 and 1995 and there was a decrease of revenues of 16.3 percent for the year. Total net income as reported had a decrease of 20 percent. The average net income, which is the net income for the total industry divided by the number of active cardrooms, decreased by 11.1 percent. There is a reduction in the overall revenue, part of which is attributed to the number of cardrooms being decreased. The average net income per card room has also dropped. The other trend that we have tracked is to look at the top ten card rooms, which are typically the stronger card rooms. In the last year, the top ten card rooms for the most part have dropped in revenues. He thinks the bar is being raised in terms of the level of competition, part of that is by the tribes and part of that is by the changes brought forth by SB6430 that allowed for 15 table card rooms. He thinks there may be fewer card rooms in the future but it will be a much more competitive environment.

Commissoiner Casey said that in 1990, there was approximately the same number of games that there is today. Gross revenues for 1990 were \$9.9 million and the gross revenues for 1996 were \$15.2 million. Five fewer games are making significantly more money at this point in time than they were in 1990. **Mr. Saucier** said that is correct. He speculated that this industry, which is referred to as a social card game, was typically where a restaurant or a tavern would have one or two poker tables in the back. He doesn't know if statistics regarding the number of tables is available, but he has found that more of the card rooms had to go to five tables just to be able to compete prior to SB 6430. There were fewer card rooms but significantly more tables.

Mr. Saucier said there was also a statutory limitation by the legislature that said that card rooms could only charge \$2 per half hour. There was a change a few years ago that allowed for us to charge \$3 per half hour. The industry also asked the Commission at the time to approve center dealers to coincide with that increase to \$3 per half hour. That was a 50 percent increase in revenue that was available to card rooms. Of course, their expenses also went up because there was significantly more staff involved. **Commissioner Casey** said that the card room industry seems to be going through what the rest of the country is reflecting and that is that it's more difficult for the smaller guys to keep making it.

Acting Chairman Ludwig thanked Mr. Saucier for his presentation and asked for any other public comment before Mr. Panagiotu began his presentation.

PERRY PANAGIOTU

Mr. Panagiotu said that his license was summarily suspended by the director under the name Tab King Distributing, for which his company took responsibility for selling product that was deemed defective. He said he doesn't really feel that he has ever grasped the seriousness of this situation, but that was due to his lack of involvement.

Acting Chairman Ludwig asked for a summary of the charges and the circumstances, since he is the only commissioner present who knows the details of the case.

Mr. Panagiotu said that his company, Tab King Distributing, was offered a 20 percent discount from APT, a manufacturer in Canada. His competitors were not selling this product. This product was available on a 20 percent discount only if he purchased an entire run. He said he sold these games by saying these were "good games." He said that was loosely worded and it came back to haunt him. He used that adjective because of the percentage of payout and the fact that his competitors did not carry the product. He received a phone call in October 1995 from one of his customers stating that he would be investigated by the Gambling Commission because he knew where the winning tickets were in the APT games. He read from a statement that said he would like to get his license back. He said the license suspension was never given a time period of how long the suspension would be for.

Mr. McCoy noted that this case has already been heard by the Commission and that he feels it may be inappropriate for the Commission to hear this now. **Mr. Panagiotu** said he has a distributor representative license pending with the Commission staff. **Mr. McCoy** said that the problem is that there is a record of a previous hearing and a previous action and if action is taken on the pending license, the appeal is going to come before the same Commission. He wanted to make it clear that anything that happens now that there is no complaint that may result in the appearance of prejudice by this Commission. If there is an application pending, the appropriate procedure is to take it to the staff so they can take an action. If there is a denial, then there is a hearing on that. The appeal then comes before the Commission. If he wants to present evidence that is going to be relevant to that application, the Commission as the appellate body is going to hear that information in that process. He doesn't want this presentation to prejudice their ability to hear that in the future.

Acting Chairman Ludwig said the Commission may not be able to hear any further appeal, if there is one, impartially and neutrally if it has been argued in advance. **Commissioner Casey** said, that if she understands this correctly, he has an application pending. **Mr. Panagiotu** said he is coming forward today without reference to that particular application. He wanted to provide the Commission with some information as a future attempt or beginning point toward gaining a license back or reinstatement consideration. **Commissioner Casey** asked what the procedure for licensing is in this situation.

Director Miller said Mr. Panagiotu has applied for a license and he has been advised that he would go through the licensure process. If today's issue is on that application and he is submitting new information on that application, then that information should be reserved for the process. He said he thought Mr. Panagiotu was here today to ask for clarification on the term of his suspension.

Commissioner Garrison asked if the Commission is to discuss the term of his suspension or his new application. **Director Miller** said that there is an application for a distributor representative license pending. Mr. Panagiotu had a company called Tab King. That company's license was revoked initially for eight years and then it was changed to a non-specific term. **Mr. McCoy** clarified that the Commission took an action and there was an appeal filed. There is still an appeal of the Commission's order pending in the Superior Court.

Mr. Panagiotu said that, when he went to a meeting with Director Miller and Mr. Bishop, he asked them about the status of his license as a distributor representative and he was told the Commission would have to deny it.

Acting Chairman Ludwig asked Mr. Panagiotu if he had received a formal denial yet. **Mr. Panagiotu** answered no. **Acting Chairman Ludwig** said he thinks Mr. Panagiotu is here prematurely. Once he receives the denial, then he has an appeal to the Commission of that action. **Ms. Tellefson** said that how the process works is once charges are issued for denial, then the applicant may choose to apply for a hearing before an administrative law judge. Then if he chooses to appeal whatever ruling the judge would make, it would come before the Commission.

Mr. Panagiotu said that a copy of what he was going to say has already been handed to Chairman Heavey. **Commissioner McLaughlin** asked if this would be treated as any other ex parte communication. **Director Miller** said that the information that Mr. Panagiotu is setting forth is basic information to bolster an argument for relief.

Mr. Panagiotu said since he flew all the way over here, he would like to get clarification on the term of his suspension for Tab King Distributing. **Acting Chairman Ludwig** said his belief is that while it's pending in Superior Court, it is out of the Commission's jurisdiction.

Mr. Panagiotu said then the process would be to go ahead with the appeal before the Superior Court. He was under the impression that he should come before the Commission because the staff's hands were tied in doing anything and that his recourse towards reinstatement would be through the Commission.

Acting Chairman Ludwig asked what the status of Mr. Panagiotu's appeal is. **Mr. Panagiotu** said the appeal is just filed and it is still pending. **Mr. McCoy** asked if Mr. Panagiotu was asking for relief on behalf of himself or on behalf of Tab King. **Mr. Panagiotu** said he is asking for relief on behalf of Tab King because the charges are not against himself. **Director Miller** said the final order was for Tab King but it also attributed the acts of Tab King to Mr. Panagiotu.

Acting Chairman Ludwig said Mr. Panagiotu has an appeal pending in Superior Court of the Tab King license suspension and he also has an application that has not yet been formally denied. If the application is denied, then he can appeal to an administrative law judge. After that decision, he may appeal to Commission on that license application. **Acting Chairman Ludwig** asked if there was anything in the statute or the rules regarding price discrimination. **Ms. Tellefson** answered yes. **Acting Chairman Ludwig** asked Mr. Panagiotu if he was aware of the rules regarding price discrimination since he had said he had a discount that was unavailable to any other distributor. **Mr. Panagiotu** said his understanding was that this was all the product they had. **Director Miller** said that the distributor in question is no longer in business. **Commissioner McLaughlin** asked what would happen if the appeal in Superior Court is dismissed, would there be a certain time period for the suspension; **Director Miller** said that originally there was a time period but upon Mr. Panagiotu's appeal to this body, this Commission removed that time period and left it open. From a staff perspective, the intent of the Commission was not known. One could argue that it was indefinite and one could argue it was meant to be shorter.

Mr. McCoy said that, as a general rule, a suspension is for a period of time and a revocation is permanent. The original order from the administrative law judge was a revocation for a period of eight years; the Commission's practice has generally been to say there is a bar to reapplication for a period of time. That way staff does not have to deal with someone coming back every year asking for a new application and then having to deny it on the same basis. In this case, the original order was a revocation for a period of eight years, the Commission simply revoked it and didn't set a period of time for a bar to reapplication. That is not the issue that is currently before the Commission as an entity. It is a separate application, it is not Tab King coming back. **Mr. Panagiotu** asked if there will be a term established for any time period. **Mr. McCoy** said it is not required that the final order have a term established for any time period. A Gambling Commission license lasts for a year. There's no requirement that a period of time be set on it, but there is also no ban to reapplication but it will be a consideration at a future proceeding. **Mr. Panagiotu** said that what he wants to do is make sure the Commission has as much information as possible so that when they are making a judgment so that it is based on facts. **Director Miller** said the staff is not going to do anything to keep information away from this Commission in making their decision and will give Mr. Panagiotu every opportunity to come forward and share his view. The staff is doing nothing to delay or hinder his application. He said his decision was made public the day it came in, but the process does take time.

Acting Chairman Ludwig asked if there were any other comments from the public or the Commission. He reminded the audience that the Commission expects to be back in Spokane in the next two or three weeks for the sole purpose of hearing public comments on the Kalispel proposal at Airway Heights. He said he was sure that public notice would be sent out when the time and place is set. He adjourned the meeting.

NOTE: THESE PRINTED MINUTES PLUS THE TAPES CONSTITUTE THE FULL MINUTES.

Susan D. Green
Executive Assistant